

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

SARAH TONEY,)	
)	
Plaintiff,)	NO. 1:13-CV-00042
)	
v.)	
)	
QUALITY RESOURCES, INC., et al.)	Hon. Milton I. Shadur
)	
Defendants.)	

DEFENDANT SEMPRIS, LLC'S STATUS REPORT

Pursuant to the Court's request during the most recent status hearing in this action and in advance of the status hearing set for March 24, 2015, Sempris provides the following brief description of the procedural posture of the case:

1. In her Third Amended Complaint, Plaintiff Sarah Toney ("Toney") asserts two claims against Defendants under the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* ("TCPA"), alleging (1) violations of the TCPA, 47 U.S.C. §227(c), predicated on alleged telephone calls to a person on the "Do Not Call" registry (Count I); and (2) violations of the TCPA, 47 U.S.C. §227(b), for allegedly using an automatic telephone dialing system to call cellular telephones (Count II). Toney's claims are based on calls allegedly made to her by Defendant Quality Resources, Inc. ("Quality") on December 10 and 11, 2012. Toney does not allege that Sempris initiated any calls to her. Rather, Toney alleges that Sempris is vicariously liable for Quality's alleged TCPA violations.

2. The parties conducted a private mediation on June 17, 2014, which has not resulted in settlement. Following that mediation, Toney filed her Third Amended Complaint on July 31, 2014. Defendant Sempris and former Defendant Provell, Inc. filed a motion to dismiss for failure to state a claim, and former Defendant Provell also moved to dismiss for lack of

subject matter jurisdiction, on the ground that Provell was dissolved as a corporation prior to the alleged calls to Toney. (Dkts. 135-37.) Defendant Quality filed a motion to dismiss for failure to state a claim or for summary judgment. (Dkts. 140-41.)

3. On December 1, 2014, Judge St. Eve issued an opinion granting in part and denying in part the motion of Defendant Sempris and former Defendant Provell. (Dkt. 168.) Judge St. Eve dismissed Provell from the lawsuit with prejudice, but denied the motion to dismiss with respect to Sempris. In her December 1 opinion, Judge St. Eve held that (1) Provell could not be liable for the alleged TCPA violations because it was dissolved by its shareholders prior to the time the alleged calls occurred, (2) Toney failed to state TCPA claims against Sempris under a direct liability theory, and (3) Toney failed to state vicarious TCPA claims against Sempris under apparent agency or ratification theories, but (4) Toney “alleged sufficient facts to make it plausible that Quality was acting as Sempris’s agent when it placed the calls at issue,” meaning that Toney must prove that Sempris had the power to issue interim instructions to Quality in order for Toney to prevail on her claims against Sempris. Judge St. Eve also denied Quality’s motion. The case was reassigned to this Court on December 15, 2014. (*See* Dkts. 170, 172.)

4. Sempris answered the Third Amended Complaint on December 18, 2014, and Quality answered the Third Amended Complaint on December 22, 2014. (Dkt. 180-81.)

5. Although the parties had agreed to resume mediation on March 17, 2015, due to a death in the family of the principal of Defendant Quality, Sempris has been unable to obtain the full discovery sought from Quality that Sempris believes will facilitate the mediation, and the parties therefore have postponed the mediation. A new mediation date has not yet been set. A further status hearing before the Court is set for March 24, 2015.

6. Pursuant to the Court's request, in late January 2015, Plaintiff provided on behalf of the parties an appendix of key documents for the Court's review that are relevant in light of the procedural posture of the case.

Dated: March 19, 2015

Respectfully submitted,

SEMPRIS, LLC

By: /s/ Matthew R. Devine
One of Its Attorneys

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CERTIFICATE OF SERVICE

I certify that on March 19, 2015, I filed the foregoing **Sempris, LLC's Status Report**, and caused a true and correct copy of the foregoing to be served upon all CM/ECF registrants of record in this action using the CM/ECF system.

/s/ Matthew R. Devine